

## Senate, No. 2101

[Senate, June 30, 2009 – Text of the further amendment (Menard) to the Senate Bill mobilizing economic recovery in the Commonwealth (Senate, No. 2061)]



## The Commonwealth of Massachusetts

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IN THE YEAR OF TWO THOUSAND AND NINE

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1           SECTION 1. Section 30 of chapter 151A of the General Laws, as appearing in the  
2   2006 Official Edition, is hereby amended by striking out, in line 32, the word “eighteen” and  
3   inserting in place thereof the following figure:- 26.

4           SECTION 2. Said section 30 of said chapter 151A, as so appearing, is hereby further  
5   amended by striking out, in lines 43 to 45, inclusive, the words “because of the individual’s  
6   need to address the physical, psychological and legal effects of domestic violence; provided  
7   that” and inserting in place thereof the following words:- ; provided, however, that such  
8   circumstances shall include an individual’s need to address the physical, psychological and  
9   legal effects of domestic violence, as well as any period in which economic circumstances  
10   permit the provision of extended benefits or any other emergency benefits funded in whole  
11   or in part by the federal government; provided, further, that.

12          SECTION 3. Said section 30 of said chapter 151A, as so appearing, is hereby further  
13   amended by inserting after the word “claim”, in line 64, the following words:- unless the  
14   period is tolled by regulation.

SECTION 4. Notwithstanding section 38C of chapter 7 of the General Laws, contracts for design services which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009 shall be exempt from the jurisdiction of the designer selection board if the design fee under the contract is less than \$25,000, if the estimated construction cost of the project for which the design services are required is less than \$250,000 or if the contract is otherwise exempt under said section 38C of said chapter 7.

SECTION 5. Notwithstanding section 38D of chapter 7 of the General Laws, each contract for designer services for a project which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009 and which is subject to the jurisdiction of the designer selection board shall be publicly advertised by the board either: (i) within the COMPASS system, not less than 2 weeks before the deadline for filing applications, and in the central register established under section 20A of chapter 9, not less than 2 weeks before the deadline for filing applications; or (ii) if the contract is not advertised within the COMPASS system, the contract shall be publicly advertised in the central register at least 2 weeks before this deadline. Every contract for design services for a project which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009 and subject to section 38K of said chapter 7 shall be publicly advertised under this section.

SECTION 6. Subsection (d) of section 38F of chapter 7 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009. For those projects, the designer selection board may delegate its powers and duties under subparagraph (b) of section 38D of said chapter 7, paragraphs (c) and (d) of section 38E of said chapter 7, and subsections (a) and (b) of sections 38G, and subsections 38H and 38I of said chapter 7 to panels of less than all the board members. A panel of at least 6 members shall be required for selection of designers under this section, 4

39 of whom shall be architects or engineers; provided, however, that there shall be at least 1  
40 architect and 1 engineer on the panel.

41 SECTION 7. Notwithstanding section 38H of chapter 7 of the General Laws, for  
42 contracts which are funded in whole or in part by the American Recovery and Reinvestment  
43 Act of 2009, the certification required by clause (iv) of subsection (e) of said section 38H of  
44 said chapter 7 shall only apply to contracts which exceed \$25,000 or which are for the  
45 design of a building for which the budgeted or estimated construction costs exceed  
46 \$250,000.

47 SECTION 8. Notwithstanding section 38K of chapter 7, a contract for design services  
48 which is funded in whole or in part by the American Recovery and Reinvestment Act of  
49 2009 and which would otherwise be subject to the requirements of said section 38K of said  
50 chapter 7 shall not be subject to those requirements unless the project at issue is estimated  
51 to exceed \$250,000.

52 SECTION 9. Notwithstanding section 40B of chapter 7 of the General Laws, for  
53 projects which are funded in whole or in part by the American Recovery and Reinvestment  
54 Act of 2009, the commissioner of capital asset management and maintenance may, upon  
55 request of a state agency or building authority, delegate project control and supervision to  
56 that state agency or building authority over projects involving structural or mechanical  
57 work in which the estimated cost is less than \$2,000,000 if the commissioner determines  
58 that the agency or authority has the ability to control and supervise such project. Except as  
59 otherwise provided in said section 40B of said chapter 7, any state agency or building  
60 authority shall control and supervise its own building projects when the estimated cost of  
61 such project is less than \$250,000 or if the project does not involve structural or mechanical  
62 work.

SECTION 10. The second and third paragraphs of section 7K of chapter 29 of the General Laws shall not apply to projects which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

No provider of design services for any building project for which a state agency is the using agency shall be selected by the designer selection board or by the administering agency in accordance with sections 38A ½ to 38N, inclusive, of chapter 7 of the General Laws, and no design services shall be performed for or by such administering agency for any building project for which the satisfactory completion of a study program is required before the design or construction of that project, until: (a) the study, program or, where appropriate, both have been satisfactorily completed to such extent that a contract for final design may be awarded in the discretion of the commissioner of capital asset management and maintenance; (b) the using agency certifies in writing to the commissioner of capital asset management and maintenance that the study, program or, where appropriate, both correspond to the current needs of that agency, including its current long-term capital facilities development plan; and (c) the commissioner requests that 1 or more of the directors of the office of programming, office of project management or office of facilities management review the study or program or, where appropriate, both and the directors certify in writing to the commissioner that the study, program or, where appropriate, both reflect the using agency's needs as stated, that they provide an accurate estimate of the project requirements, cost and schedule, that the project can be accomplished within the appropriation or authorization for that project, and recommends proceeding with design, construction or, where appropriate, both.

86           This section shall not apply to maintenance or repair projects, as defined by section  
87   39A of chapter 7 of the General Laws, estimated to cost less than \$250,000, if the executive  
88   head of the agency administering the project certifies in writing that the design work is or  
89   shall be such as to specify a project that can be accomplished and that there are funds  
90   available to pay for the design services.

91           SECTION 11. Section 26A of chapter 29 of the General Laws shall not apply to  
92   maintenance or repair projects, as defined by section 39A of chapter 7 of the General Laws,  
93   which are funded in whole or in part in the American Recovery and Reinvestment Act of  
94   2009 and are estimated to cost less than \$250,000, if the executive head of the agency  
95   administering the project certifies in writing that the design work is or shall be such as to  
96   specify a project that can be accomplished, and that there are funds available to pay for the  
97   design services.

98           SECTION 12. Notwithstanding any general or special law to the contrary, the Water  
99   Pollution Abatement Trust established in section 2 of chapter 29C of the General Laws may  
100   establish such terms and conditions for any loan or other form of financial assistance made  
101   under said chapter 29C that is funded in whole or in part by amounts provided under the  
102   American Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall  
103   determine to be in the best interests of the commonwealth and as required to comply with  
104   federal law including, without limitation, the interest rate, repayment period, number of  
105   payments to be made and amount of principal to be repaid on such loan or other form of  
106   financial assistance.

107           SECTION 13. Notwithstanding any general or special law to the contrary, the Water  
108   Pollution Abatement Trust established in section 2 of chapter 29C of the General Laws may  
109   transfer amounts held in the Drinking Water Revolving Fund to the Water Pollution

Abatement Revolving Fund for application by the trust to the purposes specified in section 5 of said chapter 29C, and may transfer amounts held in the Water Pollution Abatement Revolving Fund to the Drinking Water Revolving Fund for application by the trust to the purposes specified in section 18 of said chapter 29C, in each case to the extent authorized by the federal Clean Water Act and the federal Safe Drinking Water Act.

SECTION 14. For contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Laws shall only apply if the contract is estimated to cost more than \$50,000 but not more than \$100,000.

SECTION 15. Notwithstanding the first sentence of subsection (a) of section 39M of chapter 30 of the General Laws, a transportation or public works project subject to award under said section 39M of said chapter 30 by a department, agency or authority of the commonwealth that is funded in whole or in part through the American Recovery and Reinvestment Act of 2009 and that is expected to interfere with the movement of traffic or the traveling public may, in the discretion of the awarding authority, be procured through a bidding method that awards the project to the responsible and eligible bidder with the lowest bid value after taking into account the amount of time that the bidder has identified in the bid for completion of the project, hereinafter referred to as cost-plus-time bidding; provided, however, that such awarding authority may reject any bid if it is in the public interest to do so.

In utilizing a cost-plus-time bidding procurement method, the awarding authority shall use a cost parameter A and a time parameter B to determine a bid value. The cost parameter A shall be the traditional bid for the contract items and shall be the dollar amount for the work to be performed under the contract. The time parameter B shall be the

total number of calendar days required to complete the project, as estimated by the bidder, multiplied by an agency-determined daily road user cost RUC to translate time into dollars. The total bid value, which shall be clearly detailed in the bid documents, shall equal the A + B (RUC). The total bid value shall be used only to evaluate bids. The winning bid, which shall be calculated at a public bid opening at a time and location designated in the bid documents, shall be the lowest bid value submitted by a responsible and eligible bidder. The contract amount for payment purposes shall be based on the bid price A, not the total bid value. The number of days bid B shall become the contract time. For purposes of this section, "responsible and eligible bidder" shall be defined pursuant to the criteria in subsection (c) of said section 39M of said chapter 30; provided, however, that the reference to "lowest" in said subsection (c) of said section 39M of said chapter 30 shall mean "lowest bid value" as provided in this section.

The provisions of the General Laws generally applicable to public works projects including, but not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter 149 of the General Laws and sections 39F, 39G, 39H, 39J, 39K, 39M except the first sentence of subsection (a), 39N, 39O, 39P and 39R of said chapter 30 shall apply to all public works projects using the cost-plus-time bidding procurement method provided in this section.

SECTION 16. Notwithstanding section 29 of chapter 149 of the General Laws, contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009 shall only be subject to the requirements of said section 29 of said chapter 149 if the amount of the contract is more than \$25,000.

SECTION 17. (a) Subsection (2) of section 44A of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

158 (b) A contract for the construction, reconstruction, installation, demolition,  
159 maintenance or repair of any building by a public agency estimated to cost less than  
160 \$10,000 and where the overall project is also estimated to cost less than \$10,000 shall be  
161 obtained through the exercise of sound business practices. The public agency shall make  
162 and keep a record of each such contract solicitation. At a minimum, the record shall include  
163 a written description of how the services were procured and the name and address of the  
164 person from whom the services were procured. Written price quotations submitted in  
165 accordance with this subsection shall not require certificates of eligibility, update  
166 statements or bid deposits. In no event shall public agencies solicit price quotations from  
167 persons if to do so would violate chapter 268A of the General Laws.

168 (c) A contract for the construction, reconstruction, installation, demolition,  
169 maintenance or repair of any building by a public agency estimated to cost not less than  
170 \$10,000, but not more than \$50,000 and where the overall project is also estimated to cost  
171 not more than \$50,000, shall be awarded to the responsible person offering to perform the  
172 contract at the lowest price quotation; provided, however, that the public agency shall seek  
173 written price quotations from at least 3 persons customarily providing the work for which  
174 the contract is being made available. When seeking written quotations, the public agency  
175 shall make and keep a record of the names and addresses of all persons from whom price  
176 quotations were sought, the names of the persons submitting price quotations and the date  
177 and amount of each price quotation. Written price quotations submitted in accordance with  
178 this subsection shall not require certificates of eligibility, update statements or bid deposits.  
179 In no event shall public agencies solicit price quotations from persons if to do so would  
180 violate chapter 268A of the General Laws.



181 (d) A contract for the construction, reconstruction, installation, demolition,  
182 maintenance or repair of any building by a public agency estimated to cost more than  
183 \$50,000 but not more than \$100,000, except for a pumping station to be constructed as an  
184 integral part of a sewer construction or water construction project bid under section 39M of  
185 chapter 30 of the General Laws, shall be awarded to the lowest responsible and eligible  
186 bidder on the basis of competitive bids publicly opened and read in accordance with the  
187 procedure set forth in said section 39M of said chapter 30. As used in this section, the  
188 “pumping station” shall mean a building or other structure which houses only pumps and  
189 appurtenant electrical and plumbing fixtures.

190 (e) A contract for the construction, reconstruction, installation, demolition,  
191 maintenance or repair of any building by a public agency estimated to cost more than  
192 \$100,000, except for a pumping station to be constructed as an integral part of a sewer  
193 construction or water construction project bid under section 39M of chapter 30 of the  
194 General Laws, shall be awarded to the lowest responsible and eligible general bidder on the  
195 basis of competitive bids in accordance with the procedure set forth in sections 44A to 44H,  
196 inclusive of chapter 149 of the General Laws.

197 (f) When the general court has approved the use of an alternative mode of  
198 procurement of construction for a project under section 7E of chapter 29 of the General  
199 Laws, the awarding authority responsible for procuring construction services for the  
200 project shall follow the policies and procedures of this section and of sections 44B to 44H,  
201 inclusive of chapter 149 of the General Laws, to the extent compatible with the mode of  
202 construction procurement selected.

203 (g) Notwithstanding subsection (f), a public agency may undertake the procurement  
204 of modular buildings in accordance with section 44E of chapter 149 of the General Laws. A

public agency may procure site work for modular buildings including, but not limited to, construction of foundations, installations and attachment to external utilities, or any portion of site work, either in combination with the procurement of modular buildings pursuant to said section 44E of said chapter 149 or on the basis of competitive bids pursuant to subsection (e). Notwithstanding said subsection (f), a public agency may procure energy management services in accordance with sections 11C or 11I of chapter 25A of the General Laws and regulations promulgated thereunder.

SECTION 18. (a) For contracts subject to the prequalification requirements set forth in section 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, an awarding authority shall have the option to use the condensed prequalification process for general contractors described in this section in lieu of the full prequalification process set forth in said section 44D½ of said chapter 149. The purpose of the condensed prequalification process shall be to allow awarding authorities an opportunity to expedite the prequalification process provided in section 44D½ of said chapter 149 in order to most efficiently meet the specified goals and time parameters set forth in the American Recovery and Investment Act. All of the requirements of the full prequalification process set forth in said section 44D½ of said chapter 149 shall be required under the condensed prequalification process unless specifically modified in this section.

(b) Where an awarding authority opts to use the condensed prequalification process, the requirements for public notice of the building project and solicitation of responses to the request for qualifications from interested general contractors shall include all items set forth in paragraphs (1) to (8), inclusive, of subsection (d) of said section 44D½ of said chapter 149 but shall also include the following statements:

229 (1) a statement that the project is funded in whole or in part under the American  
230 Recovery and Investment Act and shall use the condensed prequalification process; and

231 (2) a statement that the evaluation procedure and the criteria for the  
232 prequalification of interested general contractors shall include an evaluation of all the  
233 criteria set forth in subsection (e) of said section 44D½ of said chapter 149 but, in order to  
234 avoid duplication and promote the expeditious commencement of projects under the  
235 American Recovery and Investment Act and without sacrificing the importance of the  
236 prequalification process, for certain evaluation categories and subcategories specifically  
237 identified in said subsection (e) of said chapter 44D ½ of said chapter 149, the  
238 prequalification committee shall evaluate interested general contractors based on a review  
239 of the information contained in the division of capital asset management and maintenance  
240 certification files including, but not limited to, the project evaluations required by  
241 subsection (7) of section 44D of said chapter 149 and the update statements required by  
242 subclause (ii) of clause (4) of said subsection (e) of section 44D½ of said chapter 149 to be  
243 submitted by interested general contractors. The prequalification committee shall exercise  
244 due diligence in checking appropriate references.

245 (c) The request for qualifications and evaluation criteria for the condensed  
246 prequalification process shall include all criteria set forth in said subsection (e) of said  
247 section 44D½ of said chapter 149 but shall not include the total or minimum point  
248 allocations for the evaluation categories and subcategories designated therein. In addition,  
249 in the interest of expediting the prequalification of general contractors for contracts funded  
250 in whole or in part under the American Recovery and Investment Act but not sacrificing the  
251 prequalification process, where certain of the evaluation subcategories specifically  
252 identified in this section require similar reporting by contractors in connection with the

certification process set forth in said section 44D of said chapter 149 and the information contained in the required update statements submitted by interested general contractors, an awarding authority issuing a request for qualifications under this condensed prequalification process shall maintain as part of the project record the written certification by the prequalification committee that it has evaluated interested general contractors based on a review of both the information contained in the certification files including, but not limited to, the project evaluations required by subsection (7) of said section 44D of said chapter 149, and the current update statements submitted by interested general contractors, and that it has exercised due diligence in checking appropriate references.

(d) Where an awarding authority opts to use the condensed prequalification process, the review of the terminations, legal proceedings, safety record and compliance record provided in subclauses (iv) to (vii) , inclusive, of clause (1) of subsection (e) of said section 44D½ of said chapter 149 and the review of credit references and public project record under subclauses (ii) and (iii) of clause (2) of said subsection (e) of said section 44D½ of said chapter 149 and the review of audited financial statements under subclause (i) of clause (3) of said subsection (e) of said section 44D½ of said chapter 149 shall be satisfied by a requirement that the prequalification committee evaluate both the information contained in the division of capital asset management and maintenance certification files including, but not limited to, the project evaluations required by subsection (7) of section 44D of said chapter 149 and the current update statements submitted by interested general contractors, and by a requirement that the prequalification committee exercise due diligence in checking appropriate references. The prequalification committee shall further be required to certify in writing that it has met these requirements, and the certification shall be maintained by the awarding authority in the project record.

277 (e) Notwithstanding subsection (f) of said section 44D½ of said chapter 149, the  
278 public notice requirements for the condensed prequalification process shall be for the  
279 request for qualifications to be advertised in the central register established by section 20A  
280 of chapter 9 of the General Laws and in the COMPASS system for not less than 2 weeks. In  
281 addition, these projects shall be advertised on the central website to be established for all  
282 projects in the commonwealth funded in whole or in part under the American Recovery and  
283 Investment Act and in accordance with any requirements contained in the American  
284 Recovery and Investment Act.

285 (f) Where an awarding authority opts to use the condensed prequalification process  
286 in lieu of the evaluation requirements set forth in subsection (h) of said section 44D½ of  
287 said chapter 149, the prequalification committee shall evaluate each statement of  
288 qualifications based on the criteria provided in the request for qualifications, the  
289 information contained in the division of capital asset management and maintenance  
290 certification files including, but not limited to, the project evaluations required by  
291 subsection (7) of said section 44D of said chapter 149 and the current update statements  
292 submitted by interested general contractors. The prequalification committee shall exercise  
293 due diligence in checking appropriate references. As provided in subsection (c), the total  
294 and minimum point allocations designated in subsection (e) of said section 44D½ of said  
295 chapter 149 shall not be included in the request for qualifications and shall not be used in  
296 the evaluation of interested general contractors where the condensed prequalification  
297 process is utilized. The evaluation of interested general contractors shall be based on the  
298 evaluation criteria set forth in this subsection and conducted within the discretion of the  
299 prequalification committee; provided, however, that the prequalification committee shall  
300 evaluate each interested general contractor on the same fair and equitable basis. A general  
301 contractor's score shall be made available to the general contractor upon request. The

302 decision of the prequalification committee shall be final and shall not be subject to appeal  
303 except on grounds of arbitrariness, capriciousness, fraud or collusion.

304 (g) Where an awarding authority opts to use the condensed prequalification  
305 process, in lieu of the requirements for the re-issuance of the request for qualifications set  
306 forth in subsection (i) of said section 44D $\frac{1}{2}$  of said chapter 149, if the awarding authority  
307 prequalifies fewer than 3 general contractors to submit bids, the awarding authority may  
308 invite general bids under sections 44B to 44E, inclusive, of said chapter 149 or, if the  
309 awarding authority prequalifies at least 2 general contractors, then the awarding authority  
310 may invite bids from the 2 prequalified general contractors.

311 (h) Procedures shall be adopted by the commissioner of capital asset management  
312 and maintenance to implement this section and to ensure that the condensed  
313 prequalification process is sufficient, fair and consistent.

314 SECTION 19. (a) Subsection (f) of section 44D $\frac{1}{2}$  of chapter 149 of the General laws  
315 shall not apply to contracts which are funded in whole or in part by the American Recovery  
316 and Reinvestment Act of 2009; provided, however, that this section shall apply.

317 (b) The public notice and solicitation required in subsection (d) of said section  
318 44D $\frac{1}{2}$  of said chapter 149 shall be advertised in the central register pursuant to section 20A  
319 of chapter 9 of the General Laws and within the COMPASS system. The public notice and  
320 solicitation shall be given within the COMPASS system and the central register not less than  
321 2 weeks before the deadline for submitting responses to the request for qualifications.

322 SECTION 20. (a) For contracts subject to the prequalification requirements set forth  
323 in section 44D $\frac{3}{4}$  of chapter 149 of the General Laws which are funded in whole or in part by  
324 the American Recovery and Reinvestment Act of 2009, an awarding authority shall have the  
325 option to use the condensed prequalification process for subcontractors described in this

section in lieu of the full prequalification process set forth in said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149. The purpose of the condensed prequalification process shall be to allow awarding authorities an opportunity to expedite the prequalification process provided in said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 in order to most efficiently meet the specified goals and time parameters set forth in the federal act. All of the requirements of the full prequalification process set forth in said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 shall be required under the condensed prequalification process unless specifically modified in this section.

(b) Where an awarding authority opts to use the condensed prequalification process, the requirements for public notice of the building project and solicitation of responses to the request for qualifications from interested subcontractors shall include all items set forth in paragraphs (1) to (8), inclusive, of subsection (d) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 but shall also include the following statements:

(1) a statement that the project is funded in whole or in part under the American Recovery and Investment Act and shall use the condensed prequalification process; and

(2) a statement that the evaluation procedure and the criteria for the prequalification of interested subcontractors shall include an evaluation of all the criteria set forth in subsection (e) of said section 44D <sup>3</sup>/<sub>4</sub> of said chapter 149 but, in order to avoid duplication and promote the expeditious commencement of projects under the federal act and without sacrificing the importance of the prequalification process, for certain evaluation categories and subcategories specifically identified in said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the prequalification committee shall evaluate interested subcontractors based on a review of the information contained both in the division of capital asset management and

350 maintenance certification files including, but not limited to, the project evaluations  
351 required by subsection (7) of section 44D of said chapter 149 and the update  
352 statements required by paragraph (e) herein to be submitted by interested  
353 subcontractors. The prequalification committee shall exercise due diligence in  
354 checking appropriate references.

355 (c) The request for qualifications and evaluation criteria for the condensed  
356 prequalification process shall include all criteria set forth in subsection (e) of said section  
357 44D<sup>3/4</sup> of said chapter 149 but shall not include the total or minimum point allocations for  
358 the evaluation categories and subcategories designated therein. In addition, in the interest  
359 of expediting the prequalification of subcontractors for contracts funded in whole or in part  
360 under the American Recovery and Investment Act but not sacrificing the prequalification  
361 process, where certain of the evaluation subcategories specifically identified in this section  
362 require similar reporting by contractors in connection with the certification process set  
363 forth in said section 44D of said chapter 149 and the information contained in the required  
364 update statements submitted by interested subcontractors, an awarding authority issuing  
365 an request for qualifications under this condensed prequalification process shall maintain  
366 as part of the project record the written certification by the prequalification committee that  
367 it has evaluated interested subcontractors based on a review of both the information  
368 contained in the certification files including, but not limited to, the project evaluations  
369 required by subsection (16) of said section 44D of said chapter 149, and the current update  
370 statements submitted by interested subcontractors, and that it has exercised due diligence  
371 in checking appropriate references.

372 (d) Where an awarding authority opts to use the condensed prequalification  
373 process, the review of the terminations, legal proceedings and safety record provided in



subclauses (iv) to (vi), inclusive, of clause (1) of subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, and the review of credit references and public project record under subclauses (ii) and (iii) of clause (2) of said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 and the review of annual revenue under subclause (i) of clause (3) of said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 shall be satisfied by a requirement that the prequalification committee evaluate both the information contained in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by said subsection (16) of said section 44D of said chapter 149 and the current update statements submitted by interested subcontractors, and by a requirement that the prequalification committee exercise due diligence in checking appropriate references. The prequalification committee shall further be required to certify in writing that it has met these requirements, and the certification shall be maintained by the awarding authority in the project record.

(e) Where an awarding authority opts to use the condensed prequalification process, the mandatory requirements for the solicitation and submission of a commitment letter for payment and performance bonds at 100 per cent of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 shall be as set forth in clause (4) of said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149. In addition, it shall be mandatory for the awarding authority to solicit in the request for qualifications, and an interested subcontractor to submit with its statement of qualifications, a certificate of eligibility for the subcontractor trade for which it is seeking to be prequalified, issued by the division of capital asset management and maintenance under said section 44D of said chapter 149.

398 (f) Notwithstanding subsection (f) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the  
399 public notice requirements for the condensed prequalification process shall be for the  
400 request for qualifications to be advertised on the central register established pursuant to  
401 section 20A of chapter 9 and in the COMPASS system for not less than 2 weeks. In addition,  
402 these projects shall be advertised in the central website to be established for all projects in  
403 the commonwealth funded in whole or in part under the American Recovery and  
404 Investment Act and in accordance with any requirements contained in the American  
405 Recovery and Investment Act.

406 (g) Where an awarding authority opts to use the condensed prequalification  
407 process in lieu of the evaluation requirements set forth in subsection (h) of said section  
408 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the prequalification committee shall evaluate each statement of  
409 qualifications based on the criteria provided in the request for qualifications, the  
410 information contained in the division of capital asset management and maintenance  
411 certification files including, but not limited, to the project evaluations required by  
412 subsection (16) of said section 44D of said chapter 149 and the current update statement  
413 submitted by interested subcontractors. The prequalification committee shall exercise due  
414 diligence in checking appropriate references. As provided in subsection (c) the total and  
415 minimum point allocations designated in subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> shall not be  
416 included in the request for qualifications and shall not be used in the evaluation of  
417 interested subcontractors where the condensed prequalification process is utilized. The  
418 evaluations of interested subcontractors shall be based on the evaluation criteria set forth  
419 in this subsection and conducted within the discretion of the prequalification committee;  
420 provided, however, that the prequalification committee shall evaluate each interested  
421 subcontractor on the same fair and equitable basis. A subcontractor's score shall be made  
422 available to the subcontractor upon request. The decision of the prequalification committee

shall be final and shall not be subject to appeal except on grounds of arbitrariness,  
capriciousness, fraud or collusion.

(h) Where an awarding authority opts to use the condensed prequalification process in lieu of the requirements for the re-issuance of the request for qualifications set forth in subsection (i) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, if the awarding authority prequalifies fewer than 3 subcontractors to submit bids, the awarding authority may invite general bids under sections 44B to 44E, inclusive, of said chapter 149 or, if the awarding authority prequalifies at least 2 subcontractors, then the awarding authority may invite bids from the 2 prequalified subcontractors.

(i) Procedures shall be adopted by the commissioner of capital asset management and maintenance to implement this section and to ensure that the condensed prequalification process set forth in this section is sufficient, fair and consistent.

SECTION 21. (a) Subsection (f) of section 44D<sup>3</sup>/<sub>4</sub> of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

(b) The public notice and solicitation required in subsection (d) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 shall be advertised in the central register under section 20A of chapter 9 of the General Laws and within the COMPASS system. The public notice and solicitation shall be given within the COMPASS system and the central register not less than 2 weeks before the deadline for submitting responses to the request for qualifications.

SECTION 22. (a) Paragraph (a) of subsection 4 of section 44F of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the

American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

(b) In inviting general bids and sub-bids, the awarding authority shall reserve the right to reject any bid if it is in the public interest to do so. In inviting sub-bids in connection with a contract, the awarding authority shall reserve the right to reject any sub-bid on any subtrade if it determines that the sub-bidder is not a person competent to perform the work as specified or if less than 3 sub-bids were received, which are not restricted to the use of 1 or more general bidders and the prices are not reasonable for acceptance without further competition.

(c) If no sub-bid is filed for a subtrade designated in the general bid form or if the only sub-bids which are filed are restricted to the use of 1 or more general bidders, the awarding authority may state, in an addendum issued with the list of sub-bidders required by subsection (d), that the general bidder shall include in the cost of his own work an amount to cover all of the work required for any such subtrade. The general contractor shall cause the work covered by the subtrade to be done by a qualified and responsible subcontractor, subject to the written approval of the awarding authority. If the awarding authority determines that a subcontractor chosen by the general contractor under this section is not qualified or responsible, the general contractor shall obtain another subcontractor who is satisfactory to the awarding authority with no adjustment in the general contractor's price.

(d) If a rejection of all sub-bids for such a subtrade occurs under this section, the awarding authority shall state, in an addendum issued with the list of sub-bidders, the amount to be included by a general bidder on the general bid form for such subtrade and, without in any way affecting other sub-bidders in other subtrades who have conformed to

the prescribed bidding procedure, new sub-bids for such subtrade shall be requested by written invitation to 3 or more qualified sub-bidders, including any that had previously submitted bids, and the sub-bids shall be publicly opened and read by the awarding authority at a time and place to be specified in the invitation. The general contractor shall cause the work covered by the subtrade to be done by the lowest responsible and eligible sub-bidder against whose standing and ability the general contractor makes no objection or, if there is no sub-bidder, by the subcontractor against whose standing and ability the general contractor and awarding authority make no objection and for a sum upon which the general contractor and the awarding authority may agree. The contract price shall be adjusted by the difference between the subcontract sum and the amount stated in the addendum. The general bidder shall include in the cost of his own work on the general bid form all expenses and profits on account of such adjustments.

(e) If after new sub-bids for a subtrade are requested by written invitation under subsection (d) the awarding authority still does not receive any sub-bids that are unrestricted to the use of 1 or more general bidders and are reasonable for acceptance based upon the estimated cost for the work of that subtrade, the awarding authority may assign the work to the general contractor if the awarding authority first confirms that its estimate for the cost of the work of that subtrade is accurate. The general contractor shall cause the work covered by the subtrade to be done by the subcontractor against whose standing and ability the general contractor and awarding authority make no objection, and for a sum upon which the general contractor and the awarding authority shall agree. The contract price shall be adjusted by the difference between the sub-contract sum and the amount stated in the addendum. The general bidder shall include in the cost of his own work on the general bid form all expenses and profits on account of such adjustments.

SECTION 23. (a) Subsection (1) of section 44J of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

(b) No public agency or authority of the commonwealth or any political subdivision thereof shall award any contract for which competitive bids are required under section 44A of said chapter 149 or section 39M of chapter 30 of the General Laws or for which competitive proposals are required under subsection (4) of section 44E of said chapter 149 or section 11C of chapter 25A of the General Laws unless a notice inviting bids or proposals therefor shall have been posted not less than 1 week before the time specified in the notice for the receipt of the bids or proposals in a conspicuous place in or near the offices of the awarding authority and shall have remained posted until the time so specified, and unless the notice shall also have been advertised either within the COMPASS system and in the central register published by the state secretary under section 20A of chapter 9 of the General Laws not less than 2 weeks before the time specified for the receipt of the bids or proposals, or if the notice is not advertised within the COMPASS system, the notice shall be advertised in the central register at least 2 weeks before the time specified. The notice shall also be published at such other times and in such other newspapers or trade periodicals as the commissioner of capital asset management and maintenance may require, having regard to the locality of the work involved.

SECTION 24. (a) Subsection (e) of section 5 of chapter 149A of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

(b) The public notice and solicitation required in subsection (c) of said section 5 of said chapter 149A shall be advertised in the central register under section 20A of chapter 9

of the General Laws and within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the request for qualifications.

SECTION 25. (a) Notwithstanding section 5 of chapter 149A of the General Laws, for contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the procedure in this section shall apply.

(b) (1) The division of capital asset management and maintenance shall annually undertake a prequalification process set forth in this section to provide a standing list of prequalified construction management at-risk firms to be used by the division in requesting proposals pursuant to subsection (c) for construction management at risk services for specific projects to be determined at a later date. Public awarding authorities other than the division shall have the option to use the standing list and related procedures upon application to, and approval by, the inspector general. A contract between a construction management at-risk firm and the division or other public awarding authority shall be secured by a performance and payment bond in the full sum of the guaranteed maximum price by a surety company licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570.

(2) Firms included on the division's standing list of prequalified construction management at-risk firms shall be prequalified for a period of 1 year from the date of issuance of the standing list by the division. Upon issuance of the standing list, the division shall publish the standing list of prequalified construction manager at-risk firms in the central register, the COMPASS system and the division's website. The division shall re-advertise and solicit applications quarterly through the request for qualifications process provided for in this section to keep the statewide standing list current.

(3) Before issuing a request for qualifications, in this section referred to as the RFQ, the division shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted to the RFQ issued pursuant to paragraph (4). The prequalification committee shall be comprised of at least 1 registered architect or 1 registered professional engineer on the division's staff who has at least 5 years experience in the construction and supervision of construction of buildings or, if not registered as an architect or professional engineer, who has at least 7 years experience in the construction and supervision of construction of buildings and at least 2 other representatives from the division as designated by the commissioner.

(4) The selection process for the annual prequalification of the division's standing list of construction manager at-risk firms shall begin once the division gives public notice of the solicitation and requests responses to an RFQ from construction management at-risk firms. The public notice and RFQ shall include: (i) a statement indicating that the RFQ is not for a specific project, but will be used to prequalify construction management at-risk firms for inclusion on the division's annual standing list and that only those construction manager at-risk firms included on the standing list shall be invited to submit proposals in response to requests for proposals issued pursuant to subsection (c); (ii) the time and date for receipt of responses to the RFQ, the address of the office to which the responses are to be delivered and the timeframe in which the public agency shall respond to the responses; (iii) a description of the experience that will be required for construction manager at-risk firms to be included on the division's standing list, which shall include a minimum of 3 public or private construction manager at-risk projects during the past 10 years; (iv) the evaluation procedure and criteria under paragraph (7), including any rating system; (v) a general description of the scope of services that would be expected of a prequalified construction manager firm during the predesign, preconstruction and construction phases



of a construction manager at-risk project; (vi) the anticipated schedule for the selection process of construction manager at-risk firms to be included on the division's standing list; and (vii) a prohibition against any unauthorized communication or contact with the public agency outside of official preproposal meetings.

(5) The division shall require interested construction management at-risk firms to submit a statement of qualifications in response to the RFQ issued pursuant to paragraph (4). The statement of qualifications shall include, at a minimum, the following: (i) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders; (ii) completion of a qualifications application similar in form to the American Institute of Architects Document A305, 1986 edition, listing general business information and financial capacity; (iii) a list of lawsuits and arbitrations to which the firm is a party in regard to construction contracts within the last 3 years, including a list of all convictions or fines for violations of state or federal law; (iv) submission of an organization chart with specific information on key project personnel or consultants; (v) submission of an audited financial statement for the most recent fiscal year and a letter from the surety company of the firm confirming the ability to provide performance and payment bonds for the building project under consideration, but the financial information submitted shall remain confidential and shall be exempt from chapter 66 of the General Laws; (vi) submission of information on the firm's safety record, including its workers' compensation experience modifier for the prior 3 years; (vii) submission of information on and evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable; (viii) submission of information regarding the firm's experience on construction manager at-risk projects, including references from the owners and architects of the building projects; (ix) submission of information on any projects where the firm was terminated, failed to

complete the work or paid liquidated damages; (x) a certificate of eligibility issued by the division pursuant to section 44D of chapter 149 of the General Laws showing the construction manager at-risk firm's capacity rating and an update statement; and (xi) any other relevant information that the division determines desirable. The statement of qualifications shall be signed under pains and penalties of perjury.

(6) The public notice and solicitation required in paragraph (4) shall be advertised in the central register pursuant to section 20A of chapter 9 of the General Laws, and within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the RFQ.

(7) Upon receipt of the statement of qualifications submitted by construction management at-risk firms, the prequalification committee established pursuant to paragraph (3) shall evaluate each statement of qualifications using the criteria provided in the RFQ. Only construction management at risk firms achieving an acceptable rating as provided in clause (iv) of paragraph (4) will be selected for inclusion on the standing list.

(c) (1) Before issuing an RFP, the division or other public awarding authority authorized under subsection (b) shall establish a selection committee for the purpose of reviewing and evaluating responses submitted to the RFP issued pursuant to paragraph (2) of this subsection. The selection committee shall be comprised of 1 representative of the designer, the owner's project manager and at least 2 representatives of the division or other public awarding authority authorized under said subsection (b).

(2) The division or any other public awarding authority authorized in subsection (b), shall issue an RFP to all construction management at-risk firms that have been prequalified by the division in accordance with said subsection (b) and who have a division certificate of eligibility indicating sufficient single project and aggregate limits for the

project. RFPs issued under this section shall follow the procedure set forth in subsections (b) to (e), inclusive, of section 6 of chapter 149A of the General Laws.

SECTION 26. Notwithstanding section 7 of chapter 149A of the General Laws, under special circumstances, when unique project requirements and circumstances warrant, public agencies may include an additional incentive clause with the contract providing for payment of an increased incentive of up to an additional  $\frac{1}{2}$  of 1 per cent; provided, however, that even under special circumstances, the total incentive payments to the construction management at risk firm shall not exceed 1 and  $\frac{1}{2}$  per cent of the estimated construction cost; provided further, that the only contracts eligible for such additional incentive payments shall be contracts that are funded in whole or in part through the American Recovery and Reinvestment Act of 2009.

SECTION 27. (a) Subsection (d) of section 8 of chapter 149A of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

(b) The public notice and solicitation required in subsection (c) of said section 8 of said chapter 149A shall be advertised in the central register under section 20A of chapter 9 of the General Laws and within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the request for qualifications.

SECTION 28. (a) Subsection (b) of section 17 of chapter 149A of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

(b) The public notice and solicitation required in subsection (a) of said section 17 of said chapter 149 shall be advertised either within the COMPASS system and in the central

637 register established pursuant to section 20A of chapter 9 of the General Laws not less than 2  
638 weeks before the deadline for submitting the letters of interest or, if the public notice and  
639 solicitation are not given within the COMPASS system, the public notice and solicitation  
640 shall be advertised in the central register not less than 2 weeks before the deadline for  
641 submitting the letters of interest.

642           SECTION 29. Notwithstanding section 53A of chapter 151A of the General Laws,  
643 moneys credited with respect to the special transfer made pursuant to section 903(g) of the  
644 Social Security Act shall be used solely for the purposes specified in said section 903(g) and  
645 shall not be subject to appropriation.

646           SECTION 30. Notwithstanding any general or special law to the contrary, for the  
647 purpose of accommodating timing discrepancies between the receipt of revenues and  
648 related expenditures, a department may receive funds from the federal government related  
649 to the American Recovery and Reinvestment Act of 2009. The comptroller may authorize  
650 encumbrances and expenditures by a department in anticipation of the department's  
651 receipt of those funds; provided, however, that the department head shall certify that  
652 accounts will not be in deficit at the end of a fiscal year. The comptroller may establish  
653 accounts based on the provisions of section 6B of chapter 29 of the General Laws.

654           SECTION 31. Notwithstanding any general or special law to the contrary, should a  
655 matching funds requirement exist with respect to the receipt of any funds from the federal  
656 government related to the American Recovery and Reinvestment Act of 2009, the  
657 department that is applying for such funds shall notify the secretary of administration and  
658 finance of the matching fund requirement. The secretary shall direct the state comptroller  
659 to establish matching accounts and to allow expenditure of funds in the accounts without  
660 further appropriation. The secretary shall also notify the joint committee on veterans and

661 federal affairs and the house and senate committees on ways and means of such action. The  
662 accounts shall be established in the General Federal Grants Fund established in section 2C  
663 of chapter 29 of the General Laws, the Federal Highway Construction Program Fund  
664 established in section 2E of said chapter 29 or any other fund as the state comptroller  
665 deems necessary to fulfill the terms and conditions of the American Recovery and  
666 Reinvestment Act of 2009.

667         SECTION 32. Notwithstanding any general or special law to the contrary, the  
668 secretary of administration and finance may authorize accounts to receive federal funds  
669 from the American Recovery and Reinvestment Act of 2009. To the extent allowed by  
670 federal law, the secretary may transfer such funds to other central service agencies charged  
671 with implementation of the American Recovery and Reinvestment Act and incur  
672 expenditures for charges related to the administrative costs of the American Recovery and  
673 Reinvestment Act and to ensure that the commonwealth meets the efficient administration  
674 and statewide accountability requirements in the American Recovery and Reinvestment  
675 Act. Notwithstanding any general or special law to the contrary, for the purpose of  
676 accommodating timing discrepancies between the receipt of revenues and related  
677 expenditures, the secretary may incur expenses and the state comptroller shall certify for  
678 payments amounts not to exceed the lesser of  $\frac{1}{2}$  of the authorization or the most recent  
679 revenue estimate therefor or as otherwise authorized by the secretary. The accounts may  
680 receive federal funds recovered from the American Recovery and Reinvestment Act of 2009  
681 in accordance with section 6B of chapter 29 of the General Laws or any other general or  
682 special law. The recoveries shall be based on rates approved in accordance with the federal  
683 Office of Management and Budget circular A-87 or any other guidance issued by the office of  
684 management and budget applicable to federal funds provided under the American Recovery  
685 and Reinvestment Act of 2009.

SECTION 33. (a) Notwithstanding any general or special law to the contrary, the following requirements shall apply to any public works project funded by the American Recovery and Reinvestment Act of 2009 where the amount of construction costs under any contract awarded is likely to exceed \$1,000,000. For the purposes of this section, "public works" shall mean building or work the construction of which is carried on by authority of the commonwealth, or by a county, town, authority or district, or with funds of a federal agency or the commonwealth or a county, city, town, authority or district to serve the interest of the general public, regardless of whether title thereof is in the commonwealth or in a county, city, town, authority or district; provided, however, that for the purposes of this definition, "construction" shall have the meaning provided in section 27D of chapter 149 of the General Laws.

(b) For any public works project subject to subsection (a), the specifications set forth in any request for responses shall include a requirement that, on a per project basis, not less than 20 per cent of the total hours of employees receiving an hourly wage who are directly employed on the site of the project, employed by the contractor or a subcontractor and subject to the prevailing wage, shall be performed by apprentices in bona fide apprentice training programs as provided in sections 11H and 11I of chapter 23 of the General Laws which are approved by the division of apprentice training in the executive office of labor and workforce development.

(c) During the performance of a public works project subject to subsections (a) and (b), the contractor shall submit periodic reports to the awarding authority with records indicating the total hours worked by all journeymen and apprentices in positions subject to the apprentice requirement. In any instance in which the apprentice hours do not constitute 5 per cent of the total hours of employees subject to the apprentice requirement,

the contractor shall submit a plan to the awarding authority describing how the contractor shall comply with the apprentice requirement.

(d) The attorney general shall have all the necessary powers to require compliance with the requirements of subsections (a), (b) and (c) therewith, including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts. Prior to award of the contract, an awarding authority may petition the attorney general for approval to adjust the requirements set forth in said subsections (a), (b) and (c). The attorney general may adjust these requirements only if he determines that compliance with these requirements is not feasible or if application of the requirements would be preempted by federal law.

(e) An awarding authority serving a low-income population may require additional specifications that address the needs of its clients including, but not limited to, preferential hiring for residents of public housing authorities for available apprenticeship positions.

(f) Subject to appropriation, the division of apprentice training shall enhance its outreach efforts to underserved populations in order to increase and diversify the number of apprentices in the commonwealth.

SECTION 34. Notwithstanding any general or special law to the contrary, employees who are hired to perform work related to the American Recovery and Reinvestment Act of 2009 funded by the federal government shall be scheduled in accounts set up solely for the purpose of the American Recovery and Reinvestment Act of 2009. No expenditures of an employee scheduled in an item of appropriation established by the American Recovery and Reinvestment Act shall be charged to any other item of appropriation and no expenditures of employees in any other item of appropriation shall be charged to an account under the American Recovery and Reinvestment Act and the state comptroller shall not permit the

transfers or charges unless otherwise approved by the secretary of administration and finance. Positions funded by the American Recovery and Reinvestment Act of 2009 shall be eliminated once the funding ends.

SECTION 35. Notwithstanding any general or special law to the contrary, an employee hired by the commonwealth and paid from federal funds provided pursuant to the American Recovery and Reinvestment Act of 2009 shall not be subject to chapters 30 and 31 of the General Laws.

SECTION 36. (a) As used in this section, the following terms shall, unless the context indicates otherwise, have the following meaning:

“Disadvantaged business enterprise”, shall have the same meaning as the term is defined in 49 CFR 26.5.

“Minority business enterprise”, shall have the same meaning as the term is defined in section 40 of chapter 23A of the General Laws.

“Secretary”, the secretary of administration and finance.

“Women business enterprise”, shall have the same meaning as the term is defined in said section 40 of said chapter 23A.

(b) Notwithstanding any general or special law to the contrary, the secretary may implement a technical assistance and capacity building pilot program applicable solely to projects funded in whole or in part by the American Recovery and Reinvestment Act of 2009. The purpose of the technical assistance and capacity building program shall be to promote, encourage and otherwise facilitate full participation of minority and women business enterprises and disadvantaged business enterprises and other small businesses in



public construction and public works projects undertaken as part of the federal economic recovery effort and funded in whole or in part by the American Recovery and Reinvestment Act of 2009.

(c) The secretary shall promulgate rules, regulations or guidelines relative to the implementation and administration of the technical assistance and capacity building pilot program established in subsection (b).

(d) No later than 6 months after the conclusion of the provision of technical assistance and capacity building services provided pursuant to subsection (b), the secretary shall provide a written report to the governor and to the joint committee on community development and small business on the provision of the services and performance outcomes relative thereto. The report shall include recommendations as to how the commonwealth may best facilitate the continued inclusion of minority and women business enterprises, disadvantaged business enterprises and small businesses in future public construction and public works projects.

SECTION 37. Notwithstanding any general or special law to the contrary, the assistant secretary for access and opportunity shall undertake a comprehensive study regarding the challenges and barriers faced by owners of small businesses, including owners of minority and women business enterprises, in accessing and obtaining working capital and debt financing. The comprehensive study shall include, but not limited to, investigating the viability of implementing a short-term loan program similar to that administered by the United States Department of Transportation's Office of Small and Disadvantaged Business Utilization. In undertaking the comprehensive study, the assistant secretary for access and opportunity shall consult the director of small business and entrepreneurship, the director of minority and women business assistance and any other

780 state agency or program whose mission is to assist small businesses and minority or  
781 women business enterprises. The assistant secretary for access and opportunity shall  
782 report the results of his investigation and study and his recommendations, if any, together  
783 with drafts of legislation necessary to carry his recommendations into effect to the governor  
784 and to the secretary of administration and finance and by filing the same with the clerks of  
785 the house of representatives and the senate, who shall forward the same to the house and  
786 senate committees on ways and means and the joint committee on community development  
787 and small business on or before October 1, 2009.

788 SECTION 38. (a) Notwithstanding any general or special law to the contrary and  
789 solely for the purposes of implementing public building and public works projects funded in  
790 whole or in part by the American Recovery and Reinvestment Act of 2009 while facilitating  
791 the involvement of small contractors, including minority and women contractors, the  
792 Massachusetts Community Development Finance Corporation may establish a contractor  
793 surety bond guarantee program pursuant to this section.

794 (b) As used in this section the following words shall have the following meanings  
795 unless the context clearly requires otherwise:-

796 "Bid bond", a bond conditioned upon the bidder on a contract entering into the  
797 contract, if he receives the award thereof, and furnishing the prescribed payment bond and  
798 performance bond.

799 "Corporation", the Massachusetts Community Development Finance Corporation.

800 "Eligible contractor", a small contractor, a minority contractor or a woman  
801 contractor.

“Minority contractor”, a person who performs as a prime contractor or general contractor or as a subcontractor on a contract funded in whole or in part by the American Recovery and Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section 40 of chapter 23A of the General Laws.

“Obligee”, (i) in the case of a bid bond, the public agency requesting bids for the performance of a contract; or (ii) in the case of a payment bond or performance bond, the public agency that has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

“Payment bond”, a bond conditioned upon the payment by the principal of money to persons under contract with him.

“Performance bond”, a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

“Person”, a natural person, business, partnership, corporation or other legal form.

“Prime contractor” or “general contractor”, the person with whom the obligee has contracted to perform a contract funded in whole or in part by the American Recovery and Reinvestment Act of 2009.

“Principal”, (i) in the case of a bid bond, a person bidding for the award of a contract; or (ii) the person primarily liable to complete a contract for the obligee or to make payments to other persons in respect of such contract and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond; provided, however, that a principal may be a prime contractor, general contractor or a subcontractor.

825           “Small contractor”, a person who performs as a prime contractor, general contractor  
826 or subcontractor on a contract funded in whole or in part by the American Recovery and  
827 Reinvestment Act of 2009 and whose average annual gross revenue is \$5,000,000 or less  
828 per year for the most recent 2 fiscal years.

829           “Subcontractor”, a person who has contracted with a prime contractor, general  
830 contractor or another subcontractor to perform a contract funded in whole or in part by the  
831 American Recovery and Reinvestment Act of 2009.

832           “Surety”, a surety company licensed to do business in the commonwealth and whose  
833 name appears on United States Treasury Department Circular 570 and who: (i) under the  
834 terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the  
835 principal breaches the conditions of the bond; (ii) under the terms of a performance bond,  
836 undertakes to incur the cost of fulfilling the terms of a contract in the event the principal  
837 breaches the conditions of the contract; (iii) under the terms of a payment bond, undertakes  
838 to make payment to all persons supplying labor and material in the prosecution of the work  
839 provided for in the contract if the principal fails to make prompt payment; or (iv) is an  
840 agent, independent agent, underwriter or any other company or individual empowered to  
841 act on behalf of such company.

842           “Woman contractor”, a person who performs as a prime contractor, general  
843 contractor or as a subcontractor on a contract funded in whole or in part by the American  
844 Recovery and Reinvestment Act of 2009 and is a woman business enterprise as that term is  
845 defined in section 40 of chapter 23A of the General Laws.

846           (c) The corporation may establish a contractor surety bond guarantee program and  
847 may, upon such terms and conditions as it may prescribe, guarantee and enter into  
848 commitments to guarantee a surety against loss resulting from a breach of the terms of a

bid bond, payment bond, performance bond or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$250,000. No such guarantee shall be issued, unless:

- (i) the person who would be principal under the bond is an eligible contractor;
- (ii) the bond is required in order for such person to bid on a contract or to serve as a prime contractor, general contractor or subcontractor on a contract;
- (iii) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and
- (iv) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

The corporation shall administer the contractor surety bond guarantee program on a prudent and economically-justifiable basis and establish such fees for eligible contractors and premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the corporation.

The corporation, as guarantor, may exercise all of the rights and powers of a company authorized by the division of insurance to guarantee bonds pursuant to chapter 175 of the General Laws, but shall not otherwise be subject to any laws related to a guaranty company under said chapter 175 nor to any rules of the division of insurance.

(d) For purposes of this section, the corporation shall establish and maintain accounts, identified individually or collectively as the Contractor Surety Bond Guarantee

Fund which shall be kept separate from other corporate funds. The fund shall consist of all monies deposited, credited or otherwise obtained pursuant to an appropriation or other allocation or assignment or grant of funds from the commonwealth; any grants, gifts and contributions received pursuant to section 3 of chapter 40F of the General Laws; all monies recovered following defaults; and any interest earned on monies within the accounts.

(e) The corporation may guarantee up to 90 per cent of the loss incurred and paid by a surety on bonds guaranteed under this section. Additionally, and subject to the provisions of this section, in connection with the issuance by the corporation of a guarantee to a surety as provided in subsection (c), the corporation may agree to indemnify the surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the corporation pursuant to said subsection (c); provided, however, that prior to making a payment under this subsection, the corporation shall first determine that a breach of the terms of the bond was imminent and the surety shall obtain written approval from the corporation prior to making any payments pursuant to this subsection.

(f) Pursuant to any such guarantee, the corporation shall reimburse the surety, as provided in subsection (e), except that the corporation shall be relieved of all liability if:

(i) the surety obtained such guarantee or agreement or applied for such reimbursement by fraud or material misrepresentation;

(ii) the total contract amount at the time of execution of the bond exceeds \$250,000; or

(iii) the surety has breached a material term or condition of such guarantee in the agreement.

SECTION 39. Any entity located in the commonwealth that receives federal funds through the American Recovery and Reinvestment Act of 2009 shall provide information as directed by the secretary of administration and finance regarding the use of the funds. The required information shall include, but not be limited to, the reporting information required by the federal government and any other information deemed necessary by the secretary to administer the American Recovery and Reinvestment Act of 2009 responsibly, efficiently and transparently. To the extent possible, the secretary shall work to streamline the reporting of this information, minimize duplication of data entry by recipients and ensure data consistency. The secretary may issue regulations to effectuate this reporting requirement.

SECTION 40. Employers and hiring agents on all projects funded in whole or in part by the American Recovery and Reinvestment Act of 2009 shall post notices of available employment opportunities to the commonwealth's job bank or the one-stop career centers closest to where the projects shall be located. The postings shall contain such information as directed by the secretary of labor and workforce development. The secretary may issue regulations to effectuate this job posting requirement.

SECTION 41. Notwithstanding any general or special law to the contrary, a carrier offering continuation coverage under a health benefit plan issued pursuant to chapter 176J of the General Laws to a qualified beneficiary eligible for the COBRA premium assistance benefit set forth in section 3001 of the American Recovery and Reinvestment Act of 2009 shall offer the extended election period available therein to each qualified beneficiary who does not have an election of continuation coverage under a health benefit plan issued under said chapter 176J on the effective date of this act, but who would be an assistance-eligible individual under the American Recovery and Reinvestment Act if such election were in

918 effect. Any such qualified beneficiary may elect such continuation coverage under said  
919 chapter 176J during the period beginning on the effective date of this act and ending 60  
920 days after the date on which the notification required under this section is provided to such  
921 qualified beneficiary. Coverage elected in this extended election period shall commence  
922 with the first period of coverage beginning on or after the effective date of this act. For the  
923 purposes of this section, carriers or their designees shall comply with paragraph (5) of  
924 subsection (j) of section 9 of said chapter 176J and any applicable notice requirements  
925 under American Recovery and Retirement act of 2009, except that such notice shall be made  
926 within 60 days after the effective date of this act.

927         SECTION 42. The secretary of administration and finance, in consultation with the  
928 state comptroller, shall submit comprehensive bi-monthly reports for 3 years after the  
929 effective date of this act to the clerks of the senate and house of representatives who shall  
930 forward the same to the joint committee on federal stimulus oversight and the house and  
931 senate committees on ways and means on the programs, aid, grants and projects funded in  
932 whole or in part by the American Recovery and Reinvestment Act of 2009, in this section  
933 referred to as ARRA. The reports shall be posted on the commonwealth's official website.  
934 The reports shall include, but not be limited to:

935         (1) an accounting of all known or anticipated federal funding from ARRA that will be  
936 available for use by any public entity in fiscal years 2009, 2010 and 2011; provided,  
937 however, that the report shall delineate federal funding that may be used to supplant or  
938 supplement general state appropriations in each fiscal year, with a further delineation  
939 between funding received as federal grants under section 6B of chapter 29 of the General  
940 Laws, funding received for public entities other than the commonwealth and funding  
941 received that is subject to further appropriation;



(2) an accounting of any funds collected or anticipated to be collected in fiscal years 2009, 2010 and 2011 pursuant to an increase in the federal Medicaid assistance percentage rate pursuant to ARRA and the assumptions used in any future projections;

(3) a listing of grants of waiver issued under ARRA;

(4) a listing of all competitive federal grants available under ARRA for which a state agency has filed an application; provided, however, that the report shall state the number of applications that have been accepted, the number that are still pending and the number that have been rejected and shall compare the number of accepted applications with not less than at least 10 other states; and

(5) an accounting of the progress of all expenditures related to capital projects funded in whole or in part by ARRA; provided, however, that the report shall include, but not be limited to: the total amount allocated for each project, the total estimated cost of each project, the amount expended for the planning and design of each project up to the time the report is filed, the amount expended on construction of each project up to the time the report is filed, the total amount currently expended on each project, the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project, the current anticipated completion date of each project and, if the project has been de-authorized, the reason for and date of such de-authorization.

SECTION 43. The secretary of administration and finance or the applicable state agency applying for funds through the American Recovery and Reinvestment Act of 2009 shall file with the house and senate committees on ways and means and the joint committee on federal stimulus oversight copies of all state applications requesting funding concurrently with submission of the application to the federal government. The secretary or the applicable state agency shall also inform the house and senate committees on ways

and means and the joint committee on federal stimulus oversight in writing of the amount of funds to be allocated and the location of where funds shall be deposited as soon as notification from the federal government on each award is received.

SECTION 44. Notwithstanding any general or special law to the contrary, for projects which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the awarding authority shall deem "Eligible" to be defined as follows:

"Eligible", a bidder or offeror who is able to meet all requirements for bidders or offerors set forth in sections forty44A to 44H, inclusive of chapter 149 of the General Laws and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.; provided, however, that eligible shall not include a bidders or offeror that, at the time of procurement, is: (1) debarred from bidding under section 44C of said chapter 149 or any other applicable law; (2) debarred by any other state or by any agency of the United States, as determined by the Commonwealth after diligent efforts; or (3) otherwise excluded from public contracting or subcontracting for the reasons set forth in subsection (c) of section 29F of chapter 29 of the General Laws; and provided further, that notwithstanding any general or special law to the contrary, the Attorney General may waive or adjust the preceding requirements if he determines in writing that special circumstances exist which justify such waiver or adjustment.

SECTION 45. (a) The provisions and definitions of terms in the Federal-State Extended Unemployment Compensation Act of 1970 shall apply to this section; provided, however, that to the extend such definitions are in conflict with or supplement the provisions and definitions of terms in the American Recovery and Reinvestment Act of

2009, the provisions and definitions of the American Recovery and Reinvestment Act of 2009 shall apply to this section.

(b) With respect to weeks of unemployment beginning on or after February 22, 2009, and continuing until the week ending prior to the last week for which 100 per cent federal sharing is authorized by subsection (a) of Section 2005 the American Recovery and Reinvestment Act of 2009 for all claims except for entities described in Section 3306(c)(7) of the Internal Revenue Code, the following shall apply:

(1) In addition to the “state ‘on’ indicator” set forth in paragraph (d) of subsection (1) of section 30A of chapter 151A of the General Laws, there shall be a “state ‘on’ indicator” for the commonwealth for a week if the director determines, in accordance with the regulations of the United States Secretary of Labor, that:

(A) the rate of insured unemployment for the period consisting of such week and the immediately preceding 12 weeks equaled or exceeded 6 per cent, regardless of the rate of insured unemployment in the 2 previous years; or

(B) (i) the average rate of total unemployment, seasonally adjusted, for the period consisting of the most recent 3 months for which data for all states are published before the close of such week equals or exceeds 6.5 per cent; and

(ii) the average rate of total unemployment (seasonally adjusted) for the three-month period referred to in clause (i) equals or exceeds 110 per cent of such average rate for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

(2) There shall be a state “off” indicator for the commonwealth for any week if none of the requirements specified in paragraph (1) of this section and in paragraph (d) of subsection (1) of said section 30A of said chapter 151A are satisfied.

(3) (A) For purposes of this subparagraph, the term “high unemployment period” shall mean any period during which an extended benefit period would be in effect if clause (i) of subparagraph (B) of paragraph (1) were applied by substituting 8 per cent for 6.5 per cent.

(B) Effective with respect to weeks beginning in a high unemployment period, subsection (5) of said section 30A of said chapter 151A shall be applied by substituting: (i) 80 per cent for fifty per cent in paragraph (a); (ii) 20 times for thirteen times in paragraph (b); and (3) 46 times for thirty-nine times in paragraph (c).

(c) The indicators specified in subsection (b) shall be operative only if mandated or permitted by federal law.

(d) Notwithstanding any other provision of this section, the governor may, if permitted by federal law, suspend the payment of extended unemployment benefits under this section, to the extent necessary to ensure that otherwise eligible individuals are not denied, in whole or in part, the receipt of emergency unemployment compensation benefits authorized by the federal Supplemental Appropriations Act of 2008, the Unemployment Compensation Extension Act of 2008 and the American Recovery and Reinvestment Act of 2009 and that the state receives maximum reimbursement from the federal government for the payment of those emergency benefits.

1035           (e) This section shall not be implemented unless the director of workforce  
1036   development determines that these provisions have been approved by the United States  
1037   Department of Labor. The director shall immediately provide a copy of this section to the  
1038   United States Department of Labor for review.

1039           SECTION 46. Sections 4 to 11, inclusive, sections 14 to 28, inclusive and section 33  
1040   shall apply only to contracts advertised after the effective date of this act.